

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

TIMOTHY A. PRESSLEY,)	
Plaintiff,)	
)	
)	
v.)	Civil Action No. 2:08-CV-34
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
Defendant.)	

**ASSENTED-TO ORDER FOR REVERSAL AND REMAND
PURSUANT TO SENTENCE FOUR OF 42 U.S.C. SECTION 405(g)**

The defendant, Michael J. Astrue, has moved this Court, pursuant to sentence four of 42 U.S.C. section 405(g), to enter a judgment reversing the Commissioner's decision with a remand of the cause to the Commissioner for further administrative proceedings.

Upon remand, the administrative law judge will be instructed to: (1) evaluate whether Plaintiff's packer job was performed at the substantial gainful activity level, particularly considering the special conditions under which the job was performed, to reevaluate whether the job qualifies as past relevant work; (2) evaluate whether Plaintiff's obesity is a severe impairment; and, (3) reevaluate whether Plaintiff's impairments meet Listing 12.05C.

Pursuant to the power of this Court to enter a judgment affirming, modifying, or reversing the Commissioner's decision with remand in Social Security actions under sentence four of 42 U.S.C. section 405(g), and in light of the Commissioner's and Plaintiff's request to remand this action for further proceedings, this Court hereby:

REVERSES the Commissioner's decision under sentence four of 42 U.S.C. section 405(g), with a remand of the cause to the Commissioner for further proceedings. *See Melkonyan*

v. Sullivan, 501 U.S. 89 (1991). The Clerk of the Court will enter a separate judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. As there remains no justiciable dispute pending between the parties, upon the Clerk's entry of judgment, the Court's jurisdiction over this case shall terminate except for purposes of consideration and determination of motions for attorney's fees, including any motion for such fees under the Equal Access to Justice Act (EAJA). Plaintiff shall have thirty (30) days from final judgment in which to file any motion for attorney's fees under EAJA in this matter.

Signed: May 29, 2009



Lacy H. Thornburg
United States District Judge

